

Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
DEPARTMENT OF AGRICULTURE
Rural Utilities Service

Washington, D.C.

In the matter of)	
)	
American Recovery and Reinvestment)	Docket No. 090309298-9299-01
Act of 2009 Broadband Initiatives)	
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COMMENTS OF THE PEND OREILLE COUNTY PUBLIC UTILITY DISTRICT #1

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*On Behalf of the Pend Oreille
County Public Utility
District #1*

April 13, 2009

TABLE OF CONTENTS

Introduction.....	2
Executive Summary	4
Discussion	6
NTIA Broadband Technology Opportunities Program.....	6
Item 1. The Purposes of the Grant Program	6
Item 2. The Role of the States	7
Item 3. Eligible Grant Recipients	8
Item 4. Establishing Selection Criteria for Grant Awards.....	9
Item 8. Broadband Mapping.....	11
Item 9. Financial Contributions by Grant Applicants	12
Item 10. Timely Completion of Proposals	12
Item 13. Definitions.....	13
Rural Utilities Service	14
Conclusion	16

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The Pend Oreille County Public Utility District #1 (Pend Oreille PUD, or the “District”) submits these comments in response to the March 12, 2009, joint public notice inviting interested parties to submit comments on certain designated topics that will assist the (a) National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, in establishing and administering the Broadband Technology and Opportunities Program (BTOP), and (b) Rural Utilities Service (RUS), U.S. Department of Agriculture, in implementing its expanded authority to make grants and loans for the deployment and construction of broadband systems.¹

In authorizing BTOP, Congress seeks to accelerate broadband deployment in unserved and underserved areas, and to ensure that the strategic institutions likely to create jobs or provide

¹ See, Section 6001 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, 123 Stat. 115 (February 17, 2009), which requires NTIA, in consultation with the Federal Communications Commission, to establish the Broadband Technology and Opportunities Program. The Recovery Act further establishes authority for RUS to make grants and loans for the deployment and construction of broadband systems.

significant public benefits have broadband connections of a quality and speed that compares favorably to urban areas and other surrounding communities. In expanding RUS's broadband authority, Congress seeks to improve access to broadband in areas without service or that lack sufficient access to high-speed broadband service to facilitate economic development.

I. INTRODUCTION

Established in 1936 and commencing electric and water utility operations in 1948, Pend Oreille PUD serves rural Pend Oreille County, which, as the most northeast county in the State of Washington, shares borders with Idaho and Canada.² The District is comprised of three primary operating systems: the Box Canyon Hydro System, which produces hydroelectric power from the Box Canyon Dam; the Electric System, which distributes electricity to approximately 8,500 customers; and the Water System, which owns and operates nine individual District water distribution systems.

Taking full advantage of its existing rights-of-way, the Pend Oreille PUD also provides wholesale broadband services to seven Internet service providers over its own fiber backbone,³ which includes two segments—the southern route extending 40 miles from Spokane to Newport, and the northern route extending 70 miles from Newport through Lone, to the Canadian border.⁴ The District relies on the network for internal communications, as well as provides dark fiber services to one significant ILEC customer over the southern route. The District's fiber

² Nearly the size of Rhode Island, Pend Oreille County comprises an area of 1,400 square miles. During the period 1970 to 2000, Pend Oreille County's population grew by 95 percent and, based on the 2000 census, had a population of 11,732. Estimates place the current population at 13,000. Pend Oreille County has five incorporated areas, and Newport, the largest, serves as the county seat and home to a new community college. As of the 2000 census, 1,921 people resided in Newport.

³ Washington statutes prohibit public utility districts from providing retail customers with telecommunications services, as well as mandates that they provide any wholesale services on a competitively neutral, open access basis. *See*, RCW 54.16.330.

⁴ As of the 2000 census, 479 people resided in Lone.

backbone can deliver up to one gigabit per second of bandwidth, but provides minimum speeds at 10 megabytes per second, up and down, causing Pend Oreille PUD's in-house team to quip, *"providing tomorrow's speed a decade ago!"*

With nine people per square mile, there are no stoplights within Pend Oreille County. Mining and forestry serve as the two main non-government industries in Pend Oreille County, but both have been adversely affected by the fall-out from the country's recession, with the County's unemployment rising to 13.6%. The Teck Cominco zinc mine, moreover, announced just before Christmas that it was shutting down indefinitely, laying-off 150 of its 200 employees, while Ponderay Newsprint, the County's other major employer, also announced lay-offs.

Pend Oreille County is also home to the Kalispel Tribe of Indians. Established in 1914 by Executive Order of President Woodrow Wilson, the Kalispel Indian Reservation consists of 4,654 acres along ten miles of the Pend Oreille River's east bank near Usk, Washington. The Tribe owns an additional 240 acres of reservation land on the west bank of the river north of Cusick, Washington, as well as operates the Northern Quest Casino. However, casino profits are generally down throughout the country.

The separate local exchange carriers provide services within Pend Oreille County, but, last year, a formally-appointed citizens advisory committee, known as the Community Connect Committee, recommended to the Pend Oreille County leadership that it deploy a fiber optic system along the Pend Oreille PUD's electric service route. Encapsulated, the Community Connect Committee's deliberations resulted in five essential recommendations:

- o Plan for broadband services to serve all of Pend Oreille County.
- o Concentrate initial deployment on the 80% of the population residing along the north-south corridor, and undertake a long-term deployment in the very rural areas with 20% of the population.

- o Capitalize on partnership opportunities.
- o Capitalize on the existing opportunity to deploy fiber for the future along the Public Utility District' electric lines. Use the Public Utility District's bonding authority to provide the funding for rapid deployment of the fiber network.
- o Deploy the infrastructure as quickly as possible. Do it, but do it right!

The Pend Oreille PUD, consistent with both these recommendations and its own strategic objectives, intends to develop a fiber-based network that will (a) result in redundancy for its existing fiber backbone; (b) support the roll-out of Automated Metering Infrastructure (AMI), which permits electric utilities to deploy smart-grid applications, including, among other things, demand-side conservation and outage management, and revenue protection; and (c), facilitate the availability of advanced broadband services at affordable rates to all residents of Pend Oreille County.

II. EXECUTIVE SUMMARY

NTIA Broadband Technology Opportunities Program

1. Grant funds should not be apportioned by category, nor should a rigid scorecard based on number of purposes served be employed to evaluate applications; rather, applications should be evaluated on their merit and in the totality.
2. The states' role should be consultative, not outcome determinative, and should focus on the mandatory one grant the respective states will recommend for an award.
3. Awarding grants related to network deployment directly to broadband providers serves the public interest by ensuring that NTIA maintains the most direct oversight on how the grantee uses its funds.
4. Selection criteria should be transparent, merit-based, evaluated in their totality, and should include the following factors:
 - a. Job creation and preservation
 - b. Shovel-readiness
 - c. Operational fitness and experience
 - d. Whether and to what extent the proposed project leverages existing facilities,

such as poles, conduit, fiber, towers, rights-of-way, and so on

- e. Project cost—taking into account, especially, the network’s expected useful life, as well as its cost per customer and cost per mile analyses.
 - f. Available speeds, including a network’s upgrade potential and longevity
 - g. Affordability of end-user services
 - h. Public interest opportunities and goals served
5. Broadband mapping initiatives must balance concerns about competitively sensitive information and the potential for predatory practices.
 6. Subject to maintaining commercially reasonable debt-equity ratios, applicants should be permitted to use loan proceeds to support the 20% contribution. Project costs incurred prior to grant award—particularly engineering fees—should also count toward the 20% contribution. The 20% contribution requirement, however, should be waived only in extremely limited circumstances and only for nonprofit entities.
 7. Effective front-end screening of the project business case and applicant’s operational fitness and experience, along with adequate engineering supporting the application, will help ensure that projects can be completed within the two-year timeline.
 8. Unserved communities should be identified as those with access to dial-up services only.
 9. Underserved communities should be identified as those communities whose available broadband speeds are substantially slower than the speeds available to other communities within the surrounding area.
 10. The NTIA should adopt minimum broadband speeds that encourage applicants to deploy and upgrade networks premised on long-term sustainability and future-proof designs.
 11. Network interconnection obligations should be based on open access schemes.

Rural Utilities Service

12. Grant money should be prioritized to those worthy projects where a reasonable business case cannot be made to support loan repayment; where the business case does support loan re-payment, RUS should make every effort to streamline its application process.
13. The Recovery Act’s mandate to target “rural areas without sufficient access needed for economic development” is commendable.

14. When considering the quality of broadband service needed for economic development, minimum bandwidth requirements should support robust video conferencing, with symmetrical upload/download speeds.
15. RUS should consider targeting financial assistance, whether loans, grants or some combination thereof, specifically toward the “middle mile” or “wholesale” network facilities that provide rural communities with connectivity to the Internet and other broadband services.

III. DISCUSSION

NTIA Broadband Technology Opportunity Program

Item 1. The Purposes of the Grant Program

- a. Should a certain percentage of grant funds be apportioned to each category?*

Grant funds should not be apportioned by category, nor should a rigid scorecard based on number of purposes served be employed to evaluate applications; rather, applications should be evaluated on their merit and in the totality. The NTIA should avoid creating incentives for applicants to propose contrived projects narrowly tailored to suit a particular purpose without regard to the fundamentals and sustainability of the project.

- b. Should applicants be encouraged to address more than one purpose?*

Yes; however, an application should not be viewed as deficient if it addresses only one purpose.

- c. How should the BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the United States Department of Agriculture (USDA) grants and loans program, as well as the portions of the Recovery Act that address smart grids, health information technology, education, and transportation infrastructure?*

The BTOP should encourage applications that potentially fall within more than one Recovery Act program, subject to the agencies’ cooperative efforts to ensure that no applicant receives duplicative funding for the same project costs. Moreover, this is one area where the states’ consultative role may prove particularly useful. That is, the states may be uniquely

positioned to encourage the demand side and supply side to work cooperatively on identifying and fulfilling broadband needs—for example, a fiber-to-the-premise network funded by the BTOP program may be constructed, owned and operated by a wholesale provider, but with capacity pre-negotiated and reserved for (i) the electric utility’s smart-grid applications; (ii) connectivity of municipal offices and programs; (iii) telemedicine and health information technology applications benefitting the local medical community; and (iv) schools and libraries.

Item 2. The Role of the States

a. How should the grant program consider State priorities in awarding grants?

State priorities—as articulated by each state—should be given particular emphasis with respect to the Recovery Act’s mandate that the NTIA award at least one grant per state. States should share their respective priorities with NTIA, but the evaluative function of matching applications with those priorities should remain with the NTIA. And, beyond the one grant awarded per state based on that state’s recommendation, additional awards per state should be evaluated by NTIA based on national broadband priorities and the merits of the individual projects and their related applications—and not state ranking.

b. What is the appropriate role for States in selecting projects for funding?

The states’ role should be consultative, not outcome determinative. NTIA should be cautious of any extensive “pre-screening” conducted by the states, where such screening has the effect of removing applications from NTIA’s review and selection process. Simply put, such an outcome-determinative role for the states lies outside the ambit of the Recovery Act. Put another way, a state’s recommendation should not prejudice, or somehow preempt, another entity with a compelling grant application in its own right.

Significantly, the Recovery Act—by designating NTIA and RUS as “gatekeepers” of

the broadband stimulus funds—reflects prevailing law with respect to broadband. That is, the Federal Communications Commission (FCC) has retained regulatory authority with respect to information services, which generally refers to broadband-based Internet access, and has preempted states from exercising their telecommunications regulatory authority over such services.

States, to be sure, are uniquely positioned to play an intermediary role by identifying and assembling the needs and priorities of their county and municipal governments and non-profit institutions, giving a louder voice, in effect, to smaller constituents within the state. But construing the states' consultative role as that of a helpful intermediary also mitigates the negative potential of political gamesmanship and back-room deal-making.

Too, states will, inevitably, have varying levels of experience in broadband matters, which raises the potential for disparate treatment among states. Moreover, good stewardship of government funds demands avoidance of duplicative efforts—especially where additional staffing will be required at the state level. Finally, NTIA should ensure that the states' role does not result in a *de facto* dual application process that only adds to the applicants' costs and administrative burdens.

Item 3. Eligible Grant Recipients

Many, if not most, applications to initiate or improve broadband access under BTOP will involve the construction or installation of network facilities. By designating broadband providers eligible for BTOP funds, the NTIA will have direct oversight over the entity entrusted with engineering, constructing and operating the broadband network. Moreover, if BTOP funds are limited to certain end users of broadband services, the funds may ultimately benefit laggard incumbent local exchange carriers (ILECs) that have failed to make necessary investments to

keep their facilities up to date. For example, where a school district relies on aged network facilities owned by an ILEC, BTOP funds awarded to the school district may ultimately be spent to upgrade the ILECs facilities—to the partial benefit of the school district, but to the greater benefit of the ILEC who failed to maintain adequate facilities in the first place.

To be sure, eligibility of broadband providers should be conditioned on their compliance with all federal and state regulations applicable to their services, including, without limitation, registration and reporting requirements administered by the FCC. Thus, subject to regulatory compliance, NTIA should deem broadband providers eligible for BTOP funds.

Item 4. Establishing Selection Criteria for Grant Awards

a. What factors should NTIA consider in establishing selection criteria for grant awards? How can NTIA determine that a Federal funding need exists and that private investment is not displaced? How should the long-term feasibility of the investment be judged?

Selection criteria should be transparent and merit-based, with each application being evaluated in its totality. The BTOP selection criteria should include the following factors, (without regard to order presented here):

1. Job creation and preservation. Precise measurement of an application's job creation potential will be difficult; however, the applicant and the NTIA should use reasonable efforts to assess the proposed project's job impact potential, in both the immediate term and longer term.

2. Shovel-readiness. Particularly in light of the phased approach that the NTIA will use in disbursing funds, projects that are ready to commence upon funding, such as having readied communications rights-of-way, should receive priority above those that require extensive planning and acquisition efforts prior to readiness.

3. Operational fitness and experience (sustainability). A network

installed, but not operational, is of little value to the purposes of the Recovery Act. The NTIA should assess the applicant's operational experience and favor those applications where the proposed operator has a demonstrable track-record of successful operations.

4. Whether and to what extent the proposed project leverages existing facilities. The NTIA should assess whether a project makes use of otherwise under-utilized existing facilities. Particularly where "middle-mile" facilities between communities already exist, projects that provide "last-mile" facilities that take full advantage of the "middle-mile" facilities should be favored.

5. Project cost. The NTIA should require applicants to present project cost data in a uniform manner so as to simplify comparison. Project cost should be measured in several different ways to adjust for differences in geographic area and technology. At a minimum, applicants should provide (i) cost per customer; (ii) cost per mile; and (iii) amortized cost per year (to account for the useful life of the network).

6. Available speeds, including a network's upgrade potential and longevity. As discussed in greater detail below with respect to the proposed definitions of "unserved," "underserved," and "broadband," an assessment of an applicant's proposed available speeds of service should take into account the prevailing speeds available in urban areas and surrounding communities. In addition, the NTIA should favor projects that demonstrate an ability to grow and upgrade with customer demand for greater speeds over time.

7. Affordability of end-user services. Applicants should not be required to offer services at a particular rate; however, applications should include data regarding existing broadband speeds and prices in the community and surrounding area. Applicants should be encouraged to work with community non-profits and local governments to create innovative

programs to stimulate and support demand for broadband services by disadvantaged populations.

8. Public interest opportunities and goals served. In fitting with the stated purposes of BTOP under the Recovery Act, NTIA should assess whether and to what extent a proposed project satisfies public interest needs and goals. In this regard, “public interest” should be defined broadly in a manner supportive of the relevant communities, and may include economic development opportunities (in communities with a large population of displaced workers, for example), as well as opportunities to serve lower income, minority, disabled, elderly, and other vulnerable populations.

The foregoing selection criteria should be evaluated as a total package. Much like the evidence making up the “record” in an administrative or judicial proceeding, the selection criteria must be evaluated together in determining the “probative value” or weight accorded one application versus another. And, a decision on a particular application should be based on the whole “record” relating to the application. A point system cannot totally replace looking at the probative value of the “evidence” as a whole.

Item 8. Broadband Mapping

To make the broadband inventory mapping undertaking worthwhile, the data collected should tie into and inform the identification of unserved and underserved communities over time. As the need for greater granularity in reporting increases, so does the need for protection against anticompetitive behavior and predatory practices resulting from potential access to competitively-sensitive information. As much as possible, the reporting requirements should protect **both** public and private infrastructure and networks in an even-handed fashion by relying on readily available localized information, particularly with regard to pricing and available speeds.

Item 9. Financial Contributions by Grant Applicants

Rather than creating express conditions justifying waiver of the 20% contribution requirement, NTIA should clarify how the 20% contribution will be calculated and minimize potential situations where a waiver might be requested.

In addition, project costs incurred prior to a grant award—particularly engineering fees—should also count toward the 20% contribution. Indeed, the NTIA should encourage applicants to conduct detailed engineering surveys and beginning planning before submitting applications. While this pre-grant activity imposes costs on the applicant, it also makes for a more informed application review and improves timeliness of performance post-award. Significantly, pre-grant costs incurred by the applicant decrease the amount of post-grant funding required to complete the project. As such, unless the pre-grant costs will be reimbursed by the funding, such costs should count toward the applicant's satisfaction of its 20% contribution.

Otherwise, with these two clarifications in place, the 20% contribution requirement should be waived only in extremely limited circumstances.

Item 10. Timely Completion of Proposals

As discussed in Item 4 above, the NTIA should assess the proposed operator's fitness and experience during the application process. The applicant should disclose the vendors and suppliers it intends to use, as well as identify and describe the phases of its implementation—ensuring that the applicant has adequately developed its implementation plans. At the same time, all the planning in the world cannot prevent unforeseen equipment shortages or price spikes, and grantees should not be penalized for such exigencies. That said, effective front-end screening of the project business case and applicant's operational fitness and experience, along with adequate engineering supporting the application, will help ensure that projects can be completed within the

two-year timeline.

Item 13. Definitions

a. For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms "unserved area" and "underserved area?"

The definitions of unserved and underserved communities should allow for a flexible, comparative analysis suited to the community need and location. Clearly, a community with access to dial-up services only should be deemed unserved. Even within a service area where most users are able to access broadband service, there may be areas where only dial-up is available. The definition of unserved should be open enough to include these areas, or "pockets," of unserved communities.

Underserved communities should be identified as those communities whose available broadband speeds are substantially slower than the urban speeds commonly available. The purpose should be to identify areas where the ILEC has failed to make the necessary investments in maintenance and upgrades to support a reasonable level of broadband access consistent with the surrounding communities. This approach matches availability with customer demand more effectively than a standard tied strictly to a certain number of providers. For example, under the existing RUS broadband loan program, any rural area with less than four competitors could be deemed underserved and potentially eligible for funding. That may be a reasonable conclusion if the three existing competitors in a particular rural market offer only the minimum threshold broadband service; however, if there are two existing competitors offering fiber-based broadband services at potentially limitless speeds, it seems disingenuous to claim, qualitatively-speaking, such market is truly underserved.

Finally, the consideration of whether a community is unserved or underserved should take into account the target market of the provider's services. For example, if the only

broadband provider is a cable company that targets residential customers, the business market in the community is arguably unserved.

b. How should the BTOP define “broadband service?”

The NTIA should adopt a flexible definition of minimum broadband speeds based on meeting or exceeding the prevailing speeds available in urban areas. A flexible definition of broadband should serve to encourage sustainable, adaptable, and future-proof technology.

c. How should the BTOP define the nondiscrimination and network interconnection obligations that will be contractual conditions of grants awarded under Section 6001?

Network interconnection obligations should be based on open access schemes. The Recovery Act is an attempt to stimulate the recessionary economy, and not the appropriate vehicle for limiting new access networks.

Rural Utilities Service

Item 1. What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it?

Grant money should be prioritized to those worthy projects where a reasonable business case cannot be made to support initial capital investment, but an operation and maintenance plan competently demonstrates network sustainability. RUS’s experience should not be wasted or otherwise disregarded. That said, RUS should be challenged to use its experience to streamline the Recovery Act programs. Particularly with respect to its evaluation of project business cases and applicant financials, RUS should give weight to the prudent and proven market-based standards and benchmarks.

Item 2. In what ways can RUS and NTIA best align their Recovery Act broadband activities to make the most efficient and effective use of the Recovery Act broadband funds?

RUS and NTIA should establish a joint application form, with unique appendices or

schedules as need to reflect the program priorities. Application review status and estimated dates for awards should be available to applicants via a web interface as a means of assisting applicants with their own internal planning and funding requirements.

Item 3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development?

The Recovery Act's mandate to target "rural areas without sufficient access needed for economic development" is a compelling directive to identify unserved and underserved communities. In terms of economic development, communities compete with each other to recruit potential businesses. A community with available broadband speeds of 100 Mbps will undoubtedly be more attractive to many businesses than a community with only one provider, offering service at 768 Kbps. Thus, in considering which applications best deliver "access needed for economic development," RUS's evaluation should involve a comparative analysis of broadband availability across regional communities.

When considering the quality of broadband service needed for economic development, minimum bandwidth requirements should support video conferencing, with symmetrical upload/download speeds.

Item 4. In further evaluating projects, RUS must consider the priorities listed below. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?

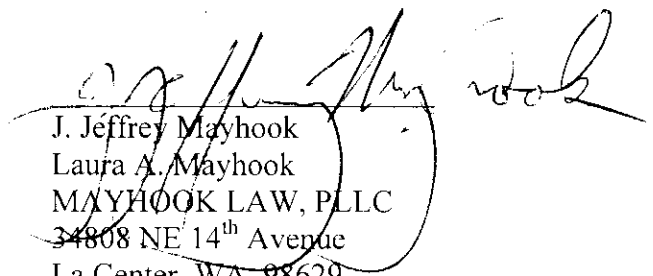
RUS should consider targeting financial assistance, whether loans, grants or some combination thereof, specifically toward the "middle mile" network facilities linking rural communities. In particular, RUS should carefully consider the project cost, shovel-readiness, operator fitness and experience, and sustainability of the project.

I. CONCLUSION

As a vested stakeholder in matters of bridging the digital divide within its own rural

community, the Pend Oreille County Public Utility District #1 thanks the NTIA and RUS for the opportunity to provide comment on these crucial matters impacting the implementation of the broadband portions of the Recovery Act.

Respectfully submitted,



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